

**PT 98-68**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>SHERIDAN-CARROLL CHARITABLE</b>	)		
<b>WORKS FUND, INC.</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>95-16-997</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>13-31-124-012</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Timothy H. Okal appeared on behalf of the Sheridan-Carroll Charitable Works Fund, Inc.

Synopsis:

The hearing in this matter was held on December 9, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not Cook County Parcel Index No. 13-31-124-012 qualified for exemption from real estate taxation for the 1995 assessment year.

Mr. John Spina, Grand Knight during 1995 of the Sheridan-Carroll Council No. 537 of the Knights of Columbus (hereinafter referred to as the "K of C") and a member of the Sheridan-Carroll Charitable Works Fund, Inc. (hereinafter referred to as the "Charitable Works Fund"), Mr. Gabe Caporale, a member of the K of C and also the charitable works fund, Mr. Albert DiPrima, a member of the charitable works fund, Ms. Catherine Samatas, a volunteer for the charitable works fund, Mr. Emilio Scalzitti, a member of the K of C and also the charitable

works fund, and Mr. William Funke, a member of the K of C and treasurer of the charitable works fund, were present and testified on behalf of the charitable works fund.

The issues in this matter include, first, whether the charitable works fund owned the parcel here in issue and the building thereon for real estate tax purposes during any portion of the 1995 assessment year; secondly, whether the charitable works fund is a charitable organization; and finally, whether the charitable works fund used this parcel and the building thereon for primarily charitable purposes during any portion of the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the charitable works fund did not own this parcel for real estate tax purposes at any time during the 1995 assessment year. It is also determined that the charitable works fund does not qualify as a charitable organization. Finally, it is determined that the charitable works fund did not use this parcel and the building thereon for primarily charitable purposes at any time during the 1995 assessment year.

It is therefore recommended that Cook County Parcel Index No. 13-31-124-012 and the building thereon remain on the tax rolls for the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On June 14, 1996, the Cook County Board of Appeals transmitted to the Department an Application for Property Tax Exemption To Board of Appeals concerning the parcel here in issue and the building thereon for the 1995 assessment year. (Dept. Ex. No. 2)

3. On September 12, 1996, the Department advised the charitable works fund that it was denying the exemption of this parcel because this parcel was not in exempt ownership during 1995. (Dept. Ex. No. 3)

4. By a letter dated September 24, 1996, one of the attorneys for the charitable works fund requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on December 9, 1997, was held pursuant to that request.

6. On November 11, 1966, Sam Sciascia and Mary Sciascia, his wife, as sellers, entered into a contract for deed with the Sheridan-Carroll Building Corp, (hereinafter referred to as the "Building Corp.") as the buyer, for the sale of the property commonly known as 2015 North Harlem Avenue, Chicago, Illinois, which is the parcel here in issue and the building thereon. (Dept. Ex. No. 2D)

7. Paragraph 16 of the Contract for Deed provides as follows:

It is understood and agreed that the purchaser, SHERIDAN-CARROLL BUILDING CORP. is the real estate holding corporation for KNIGHTS OF COUMBUS, Council No. 537, and that said premises are to be occupied as the meeting headquarters for said Council; . . . . (Dept. Ex. No. 2D)

8. Paragraph 18 of that Contract for Deed provides as follows:

The Purchaser shall not transfer or assign this Agreement or any interest therein without the previously written consent of the Sellers, which consent shall not be unreasonably withheld, and any such assignment or transfer without such previous written consent shall not vest in the transferee or assignee any right, title or interest herein or hereunder, or in said premises, . . . . (Dept. Ex. No. 2D)

9. At the annual meeting of the directors and officers of the building corp. held on November 7, 1995, a resolution was passed to assign or donate the equity interest in the parcel located at 2015 Harlem Avenue, and the building thereon, to the charitable works fund. (Dept. Ex. No. 2M)

10. At a special meeting of the directors of the charitable works fund held on November 9, 1995, the board of directors of the charitable works fund accepted the assignment of the equity interest in this parcel and the building thereon from the building corp. (Dept. Ex. No. 2N)

11. On November 16, 1995, the surviving seller pursuant to the Contract for Deed, Mary Sciascia, executed a consent to the foregoing assignment from the building corp. to the charitable works fund. (Dept. Ex. No. 2-O)

12. On February 19, 1996, the building corp. assigned its equity interest in the Contract for Deed to the charitable works fund. (Dept. Ex. No. 2E)

13. On August 28, 1996, Mary Sciascia, as surviving seller, and the building corp. and the charitable works fund executed an Addendum and Amendment to the Contract for Deed which purported to cancel and make void Paragraph 16 of that document *nunc pro tunc*. It should be noted that in that Addendum it is alleged that the date of the original Contract for Deed was November 11, 1995, when in fact the actual date of said Contract for Deed was November 11, 1966. (Dept. Ex. No. 4F)

14. At the hearing, the attorney for the charitable works fund made a motion for a directed finding in its favor on the basis that the only issue in this matter was whether or not the charitable works fund owned this parcel during 1995. The Administrative Law Judge denied the motion for directed finding and directed the attorney for the charitable works fund to proceed to present the evidence on behalf of the charitable works fund. (Tr. pp. 15-17)

15. The charter of the Knights of Columbus to which the K of C is bound sets forth its purposes as follows:

SEC.2. The purposes for which said corporation is formed are the following: (a) of rendering pecuniary aid to its members, their families and beneficiaries of members and their families; (b) of rendering mutual aid and assistance to its sick, disabled and needy members and their families; (c) of promoting social and intellectual intercourse among its members and their families, and (d) of promoting and conducting educational, charitable, religious, social welfare, war relief and welfare, and public relief work.

( Appl. Ex. No. 7, Tr. pp. 99 & 100)

16. The K of C meets at the building on the parcel here in issue on the first and third Thursday evenings of each month at 8:00 P.M. The meetings are opened with prayer. This is followed by a homily by the chaplain, who is a priest. The meetings then continue with officers'

reports, committee reports, old business and new business. A major topic at each of the meetings is always recruiting new members for the organization. During 1995, the K of C initiated more new members than any other council in the State of Illinois. (Tr. pp. 21-23)

17. During 1995, the K of C meetings would last from 45 minutes to an hour. After the meeting the members would sit down for a meal and some conversation for about an additional 30 minutes. (Tr. pp. 46-48)

18. During 1995, the K of C had approximately 90 members. The average attendance at the K of C meetings was about 40. The annual dues to belong to the K of C during 1995 were \$50.00 per member. No evidence was offered whether or not the K of C ever waived or reduced its membership dues. (Tr. pp. 49 & 50)

19. During 1995, the building on the parcel here in issue included a meeting and staging area, a food preparation area, a large storage area across the back of the building, an office, two small storage closets, and restrooms. (Appl. Ex. No. 5)

20. The parcel here in issue contains approximately 10 parking spaces. During 1995, anyone who was using the building could use those parking spaces. (Tr. pp. 48 & 49)

21. During the period January 1, 1995, through August 1995, the building on this parcel was leased for profit to DeSantini Catering. During that period, DeSantini Catering had the right to occupy the building except for the first and third Thursday of each month and several specific days on which the charitable works fund used the building for specific activities. DeSantini Catering, pursuant to the lease, had the use of the entire building except for the two storage closets. Although the lease with DeSantini Catering continued throughout the rest of 1995, it abandoned the lease during August owing approximately \$4,000.00 in back rent. (Tr. pp. 24, & 38-41)

22. After DeSantini Catering abandoned the lease, the building corp. discovered that the building was in very poor condition. Of the three heating units on the roof, only one worked, and it only worked part of the time. In fact, during the winter of 1995, that remaining heating

unit ceased operating, and all of the pipes in the building froze and burst. Also, the roof leaked and the building electrical system was a fire hazard. (Tr. pp. 24-26)

23. Shortly after DeSantini Catering abandoned the lease in August 1995, and the building corp. became aware of the condition of the building, the building corp. put this parcel and the building thereon up for sale. This parcel was still for sale on May 26, 1996, when the investigator for the Cook County Board of Appeals inspected the property. (Tr. p. 50, Dept. Ex. No. 2B)

24. The testimony indicated that due to the deteriorated condition of the building and the fact that there were only 10 parking spaces on the property, no one was interested in buying this parcel. (Tr. pp. 50, 52 & 53)

25. The charitable works fund was incorporated, pursuant to the "General Not For Profit Corporation Act" of Illinois, on January 20, 1983, for purposes which included the following:

This corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501 (c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law). (Dept. Ex. No. 2H)

26. While the charitable works fund provided a financial statement containing data for 1994, 1995, and 1996, the only year for which a complete year's data was provided was 1996. The 1996 financial statement includes a charity account concerning the fund raising activities of the charitable works fund and a building management account concerning the building income and expenses. (Appl. Ex. No. 4)

27. During 1996, the income to the charitable account included \$12,599.00 from the Tootsie Roll Drive to benefit mentally retarded persons, \$2,500.00 from other fund raising events, and \$116.00 of interest, for total contributions of \$15,215.00. (Appl. Ex. No. 4)

28. During 1996, the income to the building management account, although characterized as donations, was primarily payments in lieu of rent from the K of C to the charitable works fund. These payments in lieu of rent were used to pay the routine expenses of

the building, including the mortgage, insurance, utilities, maintenance, and other building expenses. The amount of the payment in lieu of rent was \$16,646.00. In addition, several individuals made loans to the building management account totaling \$2,160.00. The total income to the building management account was \$18,706.00. (Appl. Ex. No. 4, Tr. pp. 83-85)

29. Concerning the Tootsie Roll Drive for retarded persons, the charitable works fund allows persons to volunteer to stand on corners to collect money and give out Tootsie Rolls. These volunteers each have an affiliation with an agency which works with retarded adults or children. The money that the volunteers from those agencies collect is counted and after the expenses are paid a proportionate amount of contributions collected are distributed to those agencies. (Tr. pp. 26-31)

30. This fund drive occurred during October 1995, before the building corp. attempted to assign the Contract for Deed in this case to the charitable works fund. No detailed statement of income and expenses for the 1995 Tootsie Roll Drive was provided to the Department. (Tr. p. 32)

31. In addition, during 1995 Mr. Spina's law office was used as the headquarters for the Tootsie Roll Drive. In 1996, the charitable works fund began to use the building on the parcel here in issue as the headquarters for the Tootsie Roll Drive. (Tr. pp. 33-34)

32. The St. Joseph's Table is a fundraiser conducted by the charitable works fund which is held on the Sunday that is the closest to March the 19<sup>th</sup> of each year. During the 1995 assessment year, this would have occurred before the building corp. attempted to assign the Contract for Deed to the charitable works fund in November, 1995. In addition, no detailed statement of the income and expenses of this activity was provided to the Department. (Tr. pp. 53-57)

33. The charitable works fund provides food baskets to needy families at Easter, Thanksgiving, and Christmas. During the 1995 assessment year, Thanksgiving and Christmas would have occurred during the period after the building corp. attempted to assign the Contract for Deed to the charitable works fund. The building was used for the storage of nonperishable

items and the assembly of the baskets. No detailed statement of income and expenses for this program for 1995 was offered in evidence. (Tr. pp. 58-61)

34. The charitable works fund has a program called Adopt a Family. No financial statement was offered in evidence for that program for 1995, and no evidence was offered that said program used the building on this parcel for any purpose during 1995. (Tr. pp. 61-63)

35. The charitable works fund also conducts a fund drive for the Catholic Youth Organization (hereinafter referred to as the "CYO"). The fund drive for the CYO begins in March and ends in May each year. During 1995, this activity would have occurred before the building corp. attempted to assign the Contract for Deed to the charitable works fund. Also, no statement of income and expenses for the fund drive during 1995 was offered in evidence. Out of the funds raised by the CYO during this fundraiser, the CYO makes a payment to the K of C for their assistance in this fund raiser. The K of C gives this payment to the building maintenance fund. (Tr. pp.70-77, 79 & 80)

36. During 1995, the charitable works fund attempted to get Life Source, which conducts blood drives, to use the building on this parcel for a blood drive. However, because of the heating problems with the building on this parcel, Life Source did not use the building and no blood drive was held there during 1995. (Tr. p. 77)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any



state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The first issue presented in this matter concerns the attorney for the charitable works fund's motion at the beginning of the hearing for a directed finding in its favor on the basis that the only issue in this matter was whether or not the charitable works fund owned this parcel during 1995. The foregoing cases clearly establish that the burden of proof in this matter is on the charitable works fund, the applicant herein. It should also be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable or exempt purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978). I therefore conclude that the charitable works fund, as the applicant, had the burden of establishing not only that it owned this parcel for real estate tax purposes but also that it was a charitable organization and that it used this parcel for charitable purposes during all or a portion of the 1995 assessment year. The

motion for directed finding made by the attorney for the charitable works fund was therefore properly denied.

The second issue presented in this matter concerns the contention by the attorney for the charitable works fund, in his brief, that to allow the Administrative Law Judge (hereinafter referred to as the “ALJ”) to require proof of the three basic issues in this case, namely that the charitable works fund owned this parcel, is a charitable organization, and used this parcel for charitable purposes, transforms the ALJ into an advocate which thereby violates the constitutional due process rights of the charitable works fund.

On numerous occasions, the Illinois Courts have held that hearing procedures similar to the Department’s hearing procedures under the Property Tax Code, meet the constitutional due process requirements. Reif v. Barrett, 355 Ill. 104 (1934); Department of Finance v. Cohen, 369 Ill. 510 (1938); Sunstrand Corporation v. Department of Revenue, 34 Ill.App.3d 694 (2<sup>nd</sup> Dist. 1975); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036 (2<sup>nd</sup> Dist. 1978); and Puleo v. Department of Revenue et al., 117 Ill.App.3d 260 (4<sup>th</sup> Dist. 1983). In addition, it should be pointed out that this proceeding concerns exemption from real estate taxes, which are assessed and collected by the counties. The funds derived therefrom are available for use by said counties and not the State of Illinois. The Department has no vested interest in the collection of these real estate taxes. I therefore conclude that this contention by the attorney for the charitable works fund in his brief is without merit.

The attorney for the charitable works fund asserts that the alleged assignment of the purchaser’s interest in the contract for deed in this case is sufficient to establish that it is the owner of this parcel for real estate tax purposes. In the case of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), the Court held that the ministry, the contract purchaser, pursuant to a contract for deed, was the owner of the real estate in question for real estate tax exemption purposes.

The charitable works fund’s contention that it owned this parcel for real estate tax purposes is based on the fact that the building corp. assigned its interest as contract purchaser of

this parcel to the charitable works fund on November 7, 1995. The charitable works fund then accepted this assignment on November 9, 1995. On November 16, 1995, the surviving seller pursuant to the Contract for Deed, Mary Sciascia, executed a consent to that assignment. However, the Contract for Deed agreed to by the sellers and the building corp. as the buyer, at Paragraph 18 concerning assignment of the contract, very clearly states as follows:

THE PURCHASER SHALL NOT TRANSFER OR ASSIGN THIS AGREEMENT OR ANY INTEREST THEREIN WITHOUT THE PREVIOUSLY WRITTEN CONSENT OF THE SELLERS, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, AND ANY SUCH ASSIGNMENT OR TRANSFER WITHOUT SUCH PREVIOUS WRITTEN CONSENT SHALL NOT VEST IN THE TRANSFEREE OR ASSIGNEE ANY RIGHT, TITLE OR INTEREST HEREIN OR HEREUNDER, OR IN SAID PREMISES, . . . . (DEPT. EX. NO. 2D) (EMPHASIS SUPPLIED)

Since the seller's consent is dated after the date of the assignment and the acceptance of the assignment, said assignment did not transfer the ownership of any beneficial interest in the Contract for Deed from the building corp. to the charitable works fund. I therefore conclude that the building corp. owned this parcel and the building thereon for tax exemption purposes during the entire 1995 assessment year. I also conclude that the charitable works fund, which is the applicant herein, did not own this parcel for real estate tax purposes at any time during the 1995 assessment year.

On February 19, 1996, the building corp. again assigned its interest in the Contract for Deed to the charitable works fund. No acceptance of that assignment was offered in evidence. That assignment was not in the 1995 assessment year, which is the assessment year here in issue and therefore the validity of that conveyance is not here in issue.

Beginning in August of 1995, this parcel and the building thereon were for sale throughout the remainder of 1995.

On August 28, 1996, Mary Sciascia, the building corp., and the charitable works fund executed an Addendum and Amendment to the Contract for Deed which purported to cancel and make void Paragraph 16 of the Contract for deed *nunc pro tunc*. Paragraph 16 provides as follows:

It is understood and agreed that the purchaser, SHERIDAN-CARROLL BUILDING CORP. is the real estate holding corporation for KNIGHTS OF COUMBUS, Council No. 537, and that said premises are to be occupied as the meeting headquarters for said Council; . . . . (Dept. Ex. No. 2D)

The use of the term “*nunc pro tunc*” is limited to orders of court entered “now for then”, and are entries in the present for something done in the past, to make the record speak for what was actually done. In re Estate of Bird, 410 Ill. 390 (1951). A court has inherent power to make an entry *nunc pro tunc* to correct its clerk’s records so that they correctly reflect the actual judgment of the court when the judge has a defined and certain record as a basis for the amendment. In re Estate of Young, 414 Ill. 525 (1953). The basis cannot be the recollection of the trial judge or other persons. People rel. Sweitzer v. City of Chicago, 363 Ill. 409 (1936). Since the use of the term “*nunc pro tunc*” is limited to orders of court, it is inappropriate in an Amendment by the parties to the Contract for Deed in this proceeding. In addition, no evidence was offered in this case which could be considered a defined and certain record which could be considered the basis for the cancellation of Paragraph 16 *nunc pro tunc*. The effective date of the cancellation of Paragraph 16 is therefore August 28, 1996, the date of the Addendum and Amendment. Consequently, I conclude that Paragraph 16 was a part of the Contract for Deed and in effect during the entire 1995 assessment year.

Regarding the issue of whether the charitable works fund is a charitable organization which used the subject parcel for charitable purpose, in the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes.

Based on the foregoing findings of fact, I conclude that more than half of the funds derived by the charitable works fund came from payments in lieu of rent from the K of C. Consequently, I conclude that the funds of the charitable works funds were not primarily derived from public and private charity. I also conclude that the primary use of the building on this property between the time that the building corp. attempted to assign the Contract for Deed in this case to the charitable works fund and December 31, 1995, was not primarily for charitable purposes but rather it was for the fraternal activities of the K of C. I therefore conclude that the charitable works fund failed to meet guidelines three and six of the Methodist Old Peoples Home case.

It is clear from the purpose clause of the Knights of Columbus charter to which the K of C is bound that the primary purposes are social and mutual self help for the members and their families and only incidentally for educational and charitable purposes. Additionally, Paragraph 16 of the Contract for Deed recites that the premises are to be occupied as the meeting headquarters for the Council. I have previously found that the twice-monthly meetings of the K of C are primarily social and fraternal. In the case of People ex rel. Thompson v. The Dixon Masonic Building Association, 348 Ill. 593 (1932), the Illinois Supreme Court in considering an exemption for a building owned by a social and fraternal organization determined at page 596 as follows:

. . . but a building used primarily for social or fraternal purposes or for lodge meetings for the conduct of ritualistic work is not exempt from taxation.

*See also* the People ex rel. Nelson v. The Rockford Masonic Temple Building Association, 348 Ill. 567 (1932). The case of Cook County Masonic Temple Association et al. v. The Department of Revenue, 104 Ill.App.3d 658 (1982), cited by the attorney for the charitable works fund in his brief is distinguishable from the case here in issue, because in that case the Department and the Masonic Temple Association agreed that the numerous Temple Associations were charitable organizations. The Appellate Court then concluded that the temple buildings were used for charitable purposes.

In this case, I have previously found that the charitable works fund is not primarily a charitable organization. I have also found that the building here in issue was not primarily used for charitable purposes.

Consequently, I conclude that the charitable works fund did not own this parcel for real estate tax purposes at any time during the 1995 assessment year. I further conclude that the charitable works fund did not establish that it is a charitable organization. Finally, I conclude that this parcel was not used for primarily charitable purposes during 1995.

I therefore recommend that Cook County Parcel Index No. 13-31-124-012 remain on the tax rolls for the 1995 assessment year and be assessed to Mary Sciascia, the legal owner thereof.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
September 16, 1998